

John Butler

559 Nathan Abbott Way ♦ Stanford, C.A. 94305 ♦ jsbutler@stanford.edu

Re: CG Docket No. 11-116, Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)

November 12, 2013

Dear Chairman Tom Wheeler:

I am writing in response to the Commission’s request to help refresh the record regarding proposed curtailment of “cramming,” or unauthorized third-party charges on consumer phone bills. In particular, I support expanding the regulation to cover CMRS cramming.

- **Cell Phone Use is Pervasive.** Recently, cell phone ownership in the United States rose to 91% of adults.¹ The generation of Americans entering the workforce today – a generation that I am a part of – have had cell phone technology for as long as they could talk. As cell phone use has risen, landline use has fallen. Forty-one percent of millennials report that they have only a cell phone and no landline, compared with twenty-four percent of Gen Xers and thirteen percent of Baby Boomers.² Any regulations that only cover landlines will be limited in impact. The Commission can anticipate the changing demographics by including cell phones in its cramming rulemaking now, otherwise it must inevitably return to the question at a later date.
- **Cramming Affects an Increasing Number of Cell Phone Users.** As cell phone use grows, so do opportunities for cramming. Though litigation has successfully recovered damages in landline cramming cases, comprehensive litigation is only just beginning in cell phone cases.³ In a University of Vermont study, researchers found that 60% of third-party charges on Vermont cell phone bills were unauthorized.⁴ Vermont is not alone. A survey of mobile phone cramming in 28 states over a six-year period revealed an increase from 25 reported instances (in

¹ Lee Rainie, “Cell Phone Ownership Hits 90% of Adults,” PEW RESEARCH (June 6, 2013), available at <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults/>.

² Suzanne Choney, “‘Millennials’ an Always on, Texting Generation,” MSNBC.COM (Feb. 23, 2010), available at <http://www.nbcnews.com/id/35545420/#.UoLsAJSZJr0>

³ Vermont Attorney General, Bill Sorrell, has led the charge against cramming, but he has pieced together a coalition of 40 attorneys general to condemn cramming and urge the FTC to punish companies engaged in the practice.

⁴ Jane Kolodinsky, “Mobile Phone Third-Party Charge Authorization Study,” CENTER FOR RURAL STUDIES AT THE UNIVERSITY OF VERMONT (May 5, 2013) available at <http://www.atg.state.vt.us/assets/files/Mobile%20Phone%20Third-Party%20Charge%20Authorization%20Study.pdf>

2006) to 300 reported instances (in 2012).⁵ Reported complaints only represent a small fraction of overall cases. The University of Vermont study revealed that 78% of cramming victims did not know that they were victims before being told.⁶ This problem is likely to intensify with the demographic shifts described earlier unless the Commission takes proactive steps to regulate CMRS cramming.

- **State-by-State Efforts to Curb Cramming Have Been Limited.** Until a concerted, industry-wide effort is enforced, states will continue to litigate individual cases, leaving enforcement spotty and state-dependent. Consumers in Vermont were awarded \$900,000 in settlement⁷, and consumers in Florida, New York, Texas and Washington have all won considerable settlements from cramming companies.⁸ To truly curb cramming, however, requires a nationally coordinated effort, not a hodge-podge of individual state cases, rewarding limited classes of consumers in a state whose attorney general happens to file a claim and win.

Cell phones are now a pervasive part of daily life for most Americans. As cell phone use continues to grow and envelope our personal lives, so too will opportunities for graft. The Commission should take this early opportunity, during the infancy of cell-phone cramming, to curb the problem before it gets out of hand and costs consumers millions of dollars in fraudulent charges.

Sincerely,

John Butler
Stanford Law School c/o 2014

⁵ Luis Sanchez Betances, et al. "May 8, 2013 Mobile Cramming Roundtable," NAT. ASS. OF ATTORNEYS GENERAL (June 24, 2013), *available at* <http://www.riag.ri.gov/documents/FTCCCommentMobileCramming.pdf>

⁶ *Id.*

⁷ Hilary Niles, "Phone Bill 'Crammers' to Pay \$1.6 Million," VTDIGGER.ORG (Nov. 12, 2013), *available at* <http://vtdigger.org/2013/11/12/phone-bill-crammers-pay-1-6-million/>

⁸ Luis Sanchez Betances, et al. "May 8, 2013 Mobile Cramming Roundtable," NAT. ASS. OF ATTORNEYS GENERAL (June 24, 2013).